

1 CABINET FOR HEALTH SERVICES

2 Department for Public Health

3 Division of Public Health Protection & Safety

4 (New Administrative Regulation)

5 902 KAR 45:090. Farmers Markets

6 RELATES TO: KRS Chapter 13B, KRS 217.005 to 217.215 and 217.992, HB 391

7 STATUTORY AUTHORITY: KRS 217.005 to 217.215, 194A.050

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.005 to 217.215, amended
9 by House Bill 391, authorizes the Secretary of the Cabinet for Health Services to promulgate
10 administrative regulations for the efficient administration and enforcement of Home-Based
11 Processors and Home-Based Microprocessors. This administrative regulation establishes a
12 uniform code for the manufacture and marketing of limited based Kentucky grown home
13 processed food products at Farmers Markets, Certified Roadside Stands, or from the processors
14 farm.

15 Section 1. Definitions.

16 (1) "Adulterated food and food products" means any food or food product adulterated as
17 defined at KRS 217.025.

18 (2) "Cabinet" means the Cabinet for Health Services or its designee.

19 (3) "Certified Roadside Stand" means a physical location listed with the Kentucky Farm
20 Bureau for the direct-to-consumer marketing of limited Kentucky grown and produced food
21 products.

(4) “Easily cleanable” means that surfaces are readily accessible and made of a material and finish and so fabricated that residue may be effectively removed by normal cleaning methods.

(5) “Equipment” means articles used in the preparation and processing of food.

(6) “Farmers Market” means a physical location for the direct-to-consumer marketing of Kentucky grown whole fruit and vegetables, and limited Kentucky-grown processed food products. The set time and locations of a Farmers Market shall be listed with the Kentucky Department of Agriculture.

(7) “Food contact surfaces” means those surfaces with which food may come in contact, and those surfaces that drain onto surfaces that may come in contact with food.

(8) “Handwashing” means the following process:

(a) Wet hands and forearms with warm running water, 101 – 120°F;

(b) Apply antibacterial or antimicrobial soap and thoroughly distribute over hands and forearms;

(c) Rub hands vigorously for twenty (20) seconds, covering all surfaces of the hands, forearms and fingers, paying special attention to the thumbs, backs of fingers, backs of hands and between the fingers;

(d) Rinse hands and forearms thoroughly to remove residual soap; and

(e) Dry hands and forearms with paper towels dispensed from sanitary dispensers.

(9) “Kitchenware” means all multiuse utensils other than tableware used in the storage, preparation, or conveying of food.

(10) “Permitted Kitchen” means a food service establishment or food processing firm,

1 that holds a valid permit to process food, pursuant to the Kentucky Food, Drug and Cosmetic
2 Act, and issued by the Cabinet for Health Services.

3 (11) “Potentially Hazardous Food (PHF)” means a food that is natural or synthetic and
4 that requires temperature control because it is in a form capable of supporting the rapid and
5 progressive growth of infectious or toxigenic microorganisms, the growth and toxin production
6 of *Clostridium botulinum*, or in raw shell eggs, the growth of *Salmonella* Enteritidis.

7 “Potentially hazardous food” includes an animal food (a food of animal origin) that is raw or
8 heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut
9 melons; and garlic-in-oil mixtures that are not modified in a way that makes the product non-
10 potentially hazardous.

11 (12) “Primary ingredients” means an agricultural or horticultural product that has been
12 grown, harvested and processed by the farmer as a predominant ingredient of a food product with
13 the exception of flour, as defined in KRS 217.015(17) for use in bread as defined in KRS
14 217.015 (2), and in other acceptable items outlined in KRS 217.015 (56). “Primary ingredients”
15 does not include oil, vinegar, sugar and other seasonings or spices used in the production of
16 home processed and/or micro-processed foods.

17 (13) “Processing Authority” means the Food Science Professionals of the University of
18 Kentucky, Department of Agriculture, whose role will be to review and approve established
19 scheduled processes, for adequate process times and pressures for the size of jar, style of pack,
20 and kind of food being canned, by Home-Based Microprocessors; or other qualified entities in
21 accordance with 21CFR Chapter 21, Part 113.83 and Part 114.83.

22 (14) “Sanitization” means effective bactericidal treatment by a process that provides

1 enough accumulative heat or concentration of chemicals for enough time to reduce the bacterial
2 count, including pathogens, to a safe level on utensils and equipment.

3 (15) “Single Service Article” means tableware, carry-out utensils, and other items
4 including, but not limited to, bags, containers, placemats, stirrers, straws, toothpicks, and
5 wrappers that are designed and constructed for one-time or one-person use after which they are
6 intended for discard.

7 (16) “Single Use Article” means utensils and bulk food containers designed and
8 constructed to be used once and discarded. Single Use Articles including, but not limited to,
9 items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars,
10 plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans
11 which do not meet the materials, durability, strength, and clean ability specifications for multiuse
12 utensils.

13 (17) “Utensil” means any food-contact implement used in the storage, preparation,
14 transportation, dispensing, or sale of food.

15 (18) “Warewashing” means the cleaning and sanitizing of food-contact surfaces of
16 equipment and utensils such as kitchenware.

17 (19) “Wholesome” means in sound condition, clean, free from adulteration, and
18 otherwise suitable for use as human food.

19 Section 2. Home-based Processor Registration.

20 (1) A Kentucky farmer as defined at KRS Chapter 217.015 (59) and desiring to grow,
21 harvest, process and market Kentucky grown food products shall make written request for
22 registration on Form DFS-250, provided by the Cabinet and available at the website

<http://publichealth.state.ky.us/Food-Program.htm> , at local health departments, and from University of Kentucky Extension Offices.

(2) The application for registration shall include the following information and attachments:

(a) The physical address and acreage of the farmland on which the primary food product ingredients are to be grown; and the name and address of the property owner if not owned by the farmer.

(b) The farmer's name and the address of the primary residence occupied by the farmer;

(c) Type of Water Source: Sufficient potable water for the needs of the facility shall be provided from a source constructed, maintained, and operated pursuant to applicable requirements of the Natural Resources and Environmental Protection Cabinet (NREPC). Farmer with a non-municipal water source shall submit to the Cabinet documentation from NREPC that the water source is approved.

(d) Type of Sewage Disposal: Sewage, including liquid waste, shall be disposed of by a public sewage system, or if a public sewer system is not available, sewage disposal shall be made into a private sewage disposal system designed, constructed and operated in accordance with the requirements of the Cabinet or the Natural Resources and Environmental Protection Cabinet.

(3) Prior to marketing home-based products, the application for Home-Based Processor, along with the required water source approval, shall be submitted to the Cabinet or the local health department. Applications received by local health departments shall be forwarded to the Cabinet.

(4) A Home-Based Processor Registration shall be valid for one year, unless previously suspended or revoked, and shall be renewable annually. Home-Based Processor Registrations shall expire March 31 of each year.

(5) Home-based processors shall follow Current Good Manufacturing Practices as outlined in 21 CFR Chapter 1, Part 110.

(6) Home-Based Processed food products shall be labeled in accordance with KRS 217.005 to 217.215.

(7) Food products shall only be marketed by the registered Home-based Processor.

(8) Food products processed by a Home-based Processor shall be non-potentially hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheesecake, cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be prepared in a home and marketed for sale by a Home-based Processor. Vacuum packaging of foods in containers other than mason-type jars, is prohibited. Canning of pureed baby foods is prohibited.

(9) All jams and jellies processed in less than 10 minutes shall be filled into sterile empty jars. Sterilization shall be accomplished by submerging the jars in boiling water for at least 10 minutes at altitudes of less than 1,000 feet above sea level. Jars should be boiled for one additional minute for each additional 1,000 feet elevation above sea level.

(10) Home-based Processed food products shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.

(11) Products processed by Home-based Processors shall be packaged in food grade material.

1 (12) Products processed by Home-based Processors shall not be used or offered for
2 consumption in a retail-food establishment, by internet sales, or sold in interstate commerce.

3 (13) Pets shall not be permitted in the kitchen and shall be kept out of food preparation
4 areas during Home-based Processing related activities.

5 (14) Mop water shall not be disposed of in the dishwashing sink.

6 (15) Children under age 12 shall not be permitted in the kitchen area during Home-based
7 Processing related activities.

8 (18) Inspection of Home-Based Processor facilities shall be made for the purpose of:

9 (a) investigating compliance with KRS 217.005 to 217.215; or

10 (b) this administrative regulation or upon complaint.

11 (17) Vehicles used in transporting Home-based Processed food products shall be
12 maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle
13 compartments used to transport animals shall not be used for transporting Home-Based
14 Processed foods.

15 (18) If boiling-water canners are utilized in the production of foods by a Home-based
16 Processor, the canner must be deep enough so that at least 1 inch of briskly boiling water will be
17 over the tops of jars during processing. If an electric range is used for heating, the boiling-water
18 canner shall have a flat bottom and shall be no more than 4 inches wider than the element on
19 which it is heated.

20 (19) The Cabinet shall maintain a record of all Registered Home-Based Processors and
21 shall provide this information to the University of Kentucky Cooperative Extension Office and
22 Local Health Departments.

23 Section 3. Home-Based Microprocessor Certification.

1 (1) A Kentucky farmer, as defined at KRS Chapter 217.015(59), and desiring to grow,
2 harvest, process and market Kentucky grown microprocessed food products and participate in
3 the training program shall make written request for certification on Form DFS-252, provided by
4 the Cabinet and available at the website <http://publichealth.state.ky.us/Food-Program.htm>, at
5 local health departments, or at University of Kentucky Extension Service Offices.

6 (2) The application for certification shall include the following information and
7 attachments:

8 (a) The physical address and acreage of the farmland on which the primary food product
9 ingredients are to be grown; and the name and address of the property owner if not owned by the
10 farmer.

11 (b) The name and address of the primary residence occupied by the farmer;

12 (c) Type of Water Source: Sufficient potable water for the needs of the facility shall be
13 provided from a source constructed, maintained, and operated pursuant to applicable
14 requirements as stated in Section 2. (2) (c) of this administrative regulation.

15 (d) Type of Sewage Disposal: Sewage, including liquid waste, shall be disposed of by a
16 public sewage system, or if a public sewer system is not available, sewage disposal shall be made
17 into a private sewage disposal system designed, constructed and operated in accordance with the
18 requirements of the Cabinet or the Natural Resources and Environmental Protection Cabinet.

19 (e) A listing of the food products to be processed and marketed by the farmer;

20 (f) Verification of attendance and successful completion of the Food Processing School
21 provided by the University of Kentucky Extension Office in compliance with KRS
22 217.015(58)(a) by the farmer for the manufacture of the microprocessed food products; or

23 (g) Verification of attendance and successful completion of a food processing school

1 approved pursuant to 21 CFR 113.10 or 21 CFR 114.10, and complete the filing process as
2 defined in Section 3(2) (h) of this administrative regulation.

3 (h) Documentation from the Processing Authority for an established scheduled process
4 for each food item that is to be processed by the Home-Based Microprocessor. Any change in
5 the recipe shall constitute a recipe deviation, and a new review and approval shall be required
6 from the Processing Authority prior to processing. Each additional product shall have a separate
7 written established scheduled process and shall be submitted to the processing authority for
8 review prior to processing. All established scheduled processes shall be maintained and made
9 available upon request by the Cabinet.

10 (3) Prior to marketing home-based products, the application for Home-Based
11 Microprocessor, along with the required water source approval, shall be submitted to the Cabinet
12 or the local health department.

13 (4) Food products processed by a Home-based Microprocessor shall be non-potentially
14 hazardous. Crème filled pies, custard, custard pies, pies with meringue topping, cheesecake,
15 cream, custard and meringue pastries, raw seed sprouts and garlic-in-oil products shall not be
16 prepared in a home and marketed for sale by a Home-based Microprocessor. Vacuum packaging
17 of foods in containers other than mason-type jars is prohibited.

18 (5) Product labels for Home-based Microprocessed foods shall be labeled in accordance
19 with KRS 217.005 to 217.215. Draft copies of all Home-based Microprocessed food product
20 labels shall be submitted for review by the Cabinet prior to labeling and marketing.

21 (6) Each Home-Based Microprocessor Certification shall be issued only for the premises
22 and person named in the application and shall be non-transferable. Certifications shall be posted
23 in a conspicuous place in the processing establishment and a copy at the point of sale. Home-

Based Microprocessed food products shall only be marketed by the certificate holder that processed the food product.

(7) Each Home based Microprocessor Certification shall be valid for one year, unless previously suspended or revoked. Home-Based Microprocessor Certifications shall expire March 31 of each year and shall be renewable annually upon submittal of application accompanied by an annual fee of \$50.00.

(8) Products made by Home-Based Microprocessors shall not be used or offered for consumption in a retail-food establishment, by internet sales or in interstate commerce.

(9) Attendance of a food processing school as defined in section 3 (2) (f) of this section shall be required every three years or upon any change or addition of food products to be processed.

(10) Mop water shall not be disposed of in the dishwashing sink.

Section 4. Food Supplies.

(1) The primary ingredients used in home-based microprocessed products shall have been grown by the Microprocessor. All other ingredients in the products shall be in sound condition, safe for human consumption, shall be obtained from an approved commercially manufactured source, stored and protected separate and apart from personal use food ingredients.

(2) Ice used in the manufacture of food products shall have been commercially produced or made with potable water.

Section 5. Food Protection.

(1) At all times, including while being stored, prepared, offered, dispensed, or transported, food ingredients and processed products shall be protected from:

(a) Cross-contamination; and

(b) Potential contamination by:

1. Insects;
2. Insecticides;
3. Rodents;
4. Rodenticides;
5. Unclean equipment or utensils;
6. Unnecessary hand contact;
7. Draining;
8. Overhead leakage or condensation;
9. Dust;
10. Coughs;
11. Sneezes; or
12. Other agents of public health significance.

(2) Prior to processing, the temperature of potentially hazardous foods shall be forty-one (41) degrees Fahrenheit or below, or 140 degrees Fahrenheit or above, except during necessary times of preparation.

(3) Only food-grade lime shall be used for soaking foods prior to pickling.

(4) Jar seals for Microprocessed foods shall be inspected within 12 to 24 hours after cooling. Containers inspected and found to not be properly sealed shall be discarded. Reprocessing of unsealed jars shall be prohibited.

(5) For each Microprocessed food item, the headspace above the food in a jar and below its lid shall be in compliance with the established scheduled process for that food.

(6) Hermetically sealed packages shall be handled so as to maintain product and container integrity.

(7) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during Microprocessing related activities.

(8) Children under age 12 shall not be permitted in the kitchen area during Microprocessing related activities.

(9) Laundry facilities may be present in the residential kitchen, but shall not be used during Microprocessing related activities.

(10) Home-based Microprocessors shall restrict the use of the food preparation area during any processing activity. Cooking facilities, in the residential kitchen, shall not be available for personal use during Home-based Microprocessing activities.

(11) Vehicles used in transporting Home-Based Microprocessed food products shall be maintained in a safe and sanitary manner in accordance with KRS 217.290. Vehicle compartments used to transport animals shall not be used for transporting Home-Based Microprocessed foods.

Section 6. Food Preparation.

(1) Food shall be prepared:

(a) With a minimum of bare hand contact;

(b) On a food-contact surface; and

(c) With clean utensils that have been sanitized.

(2) Raw fruits and raw vegetables that will be cooked, cut or combined with other ingredients or that will be otherwise processed into food products by the Home-based Microprocessor shall first be thoroughly cleaned with potable water.

Section 7. Food Display and Marketing. All food on display shall be protected from contamination.

Section 8. Farmer or Processing Assistants

(1) A farmer or processing assistants shall not process food in a Home-based Micro-Processing facility while there is a likelihood of contaminating food or a food-contact surface, or transmitting a disease to another person, if the individual is:

- (a) Infected with a communicable disease that can be passed by food;
- (b) A carrier of an organism that causes a communicable disease;
- (c) Affected with a boil, infected wound, or acute respiratory infection; or
- (d) Has a symptom caused by illness, infection, or other source that is associated with an acute gastrointestinal illness such as diarrhea, fever, vomiting, jaundice, or sore throat with fever.

(2) Each person engaged in a food preparation and warewashing operation of a Home-Based Microprocessing facility shall wash his or her hands and exposed portions of arms thoroughly, with soap or detergent and warm water in accordance with Section 1 (10):

- (a) Before starting work;
- (b) After smoking;
- (c) After eating;
- (d) After handling non-washed fruits and vegetables;
- (e) After using the toilet; and
- (f) As often as is necessary during work to keep hands and forearms clean.

(9) Each worker of a Home-Based Microprocessing facility shall keep his or her fingernails trimmed and clean.

(4) Each worker of a Home-Based Microprocessing facility shall wear clean outer clothing.

(5) Each worker in the food preparation area of a Home-based Microprocessing facility shall wear a hairnet, hat, scarf, or similar hair covering that effectively restrains head and facial hair.

(6) Each worker of a Home-Based Microprocessing facility shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during working periods.

(7) Each worker of a Home-Based Microprocessing facility shall consume food or use tobacco only in designated areas. A designated area shall not be located in a food preparation area or in an area where the worker's activity may result in contamination of food, water, equipment, or utensils.

Section 9. Equipment and Utensils.

(1) Equipment:

(a) Equipment shall be deemed adequate by the processing authority for the food being processed. Use of boiling water canners is prohibited for processing of low-acid canned foods;

(b) Open-kettle canning and the processing of freshly filled jars in conventional ovens, microwave ovens, and dishwashers shall be prohibited;

(c) All low-acid food shall be sterilized at temperatures of 240 to 250 degrees Fahrenheit, in pressure canners operated at 10 to 15 PSIG as measured by a dial guage, or weighted guage if deemed appropriate by the Processing Authority. The Processing Authority shall ensure that weighted-guage pressure canners utilized by Microprocessors are operated at the correct pressure for the corresponding altitude;

(d) Pressure canners shall have been manufactured no later than five years prior to the effective date of this administrative regulation and the manufacturer shall currently be in business with the ability to provide canner parts and calibration of temperature dial gauges;

(e) Pressure canners utilized in the Microprocessing of foods shall, at minimum, be of a 16-quart capacity, which will contain 7 quart jars. Use of pressure saucepans with less than 16-quart capacities shall be prohibited;

(f) Temperature dial gauges shall be annually verified for accuracy by the manufacturer of the canner or other qualified laboratory. Verification records shall be maintained by the Home-based microprocessor and shall be made available to the Cabinet upon request;

(g) A timing device shall be available and used to verify appropriate processing time as designated in the established scheduled process; and

(h) Only regular and wide-mouth Mason-type, threaded, home-canning jars with self-sealing, two-piece canning lids with screw bands shall be used for Microprocessed foods. Mayonnaise-type jars, jars with wire bails and glass caps, and one-piece zinc porcelain-lined caps shall be prohibited.

(2) Equipment and utensils shall be:

(a) Constructed and repaired with safe materials, including finishing materials;

(b) Corrosion resistant and nonabsorbent;

(c) Maintained in good repair; and

(d) Smooth, easily cleanable, and durable under conditions of normal use.

(3) Single-service articles shall be made from clean, sanitary, and safe materials.

(4) Equipment, utensils, and single-service articles shall not impart odors, color, taste, or contaminants to food.

(5) Single-service and single-use articles shall not be reused.

(6) Safe plastic or rubber-like materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, or distortion, and are of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods shall be permitted for repeated use.

Section 10. Cleaning and Sanitizing of Equipment and Utensils.

(1) Food utensils and equipment shall be stored in a manner to avoid contamination.

(2) Food-contact surfaces and sinks shall be smooth and easily cleanable.

(3) Food-contact equipment, surfaces, and utensils shall be cleaned and sanitized prior to Microprocessing related activities and after each use.

(4) Sinks, basins or other receptacles used for cleaning of equipment and utensils shall be cleaned and sanitized before use.

(5) Equipment and utensils shall be prerinsed or prescraped and, if necessary, presoaked to remove food particles and soil.

(6) Manual cleaning and sanitizing shall be conducted as follows:

(a) For manual cleaning and sanitizing of cooking equipment, and utensils, three (3) compartments shall be provided and used. A two-compartment sink, with an additional portable tub is acceptable;

(b) Each of the following five (5) steps of the warewashing process shall be completed;

1. Prerinsing or scraping;

2. Washing with hot detergent solution;

3. Rinsing to remove abrasives and cleaning chemicals;

4. Sanitizing, using method approved by applicable provisions of KRS Chapter 217,

Kentucky Food, Drug, and Cosmetic Act, and 902 KAR 45:005, Section 17, the State Retail Food Code; and

5. Air-drying and draining.

(c) Washing, rinsing and sanitizing solutions shall be maintained in a clean condition;

(d) The washing solution shall be maintained at a minimum temperature of 95 degrees Fahrenheit; and

(e) Chemical sanitizer shall not have a concentration higher than the maximum permitted by law. A test kit or other device shall be provided to measure the parts per million concentration of the solution.

(7) Mechanical cleaning and sanitizing shall be conducted as follows: A domestic or home-style dishwasher may be used if the following performance criteria are met:

(a) The dishwasher shall effectively remove physical solids from all surfaces of dishes.

(b) The dishwasher shall sanitize dishes by the application of sufficient accumulative heat.

(c) The operator shall provide and use daily a maximum registering thermometer or a heat thermal label to determine that the dishwasher's internal temperature is at least 150 degrees Fahrenheit after the final rinse and drying cycle; and

(d) The dishwasher shall be installed and operated according to manufacturer's instructions for the highest level possible when sanitizing the kitchen facilities' utensils and tableware. A copy of the manufacturer's instructions shall be available on the premises.

(8) There shall be sufficient area or facilities, such as portable dish tubs and drain boards, for the proper handling of:

(a) Soiled utensils prior to washing; and

1 (b) Cleaned utensils after sanitizing.

2 (9) Manually cleaned equipment, utensils and tableware shall be air-dried.

3 Section 11. Toilet Facilities.

4 (1) Toilet facilities shall be installed pursuant to requirements of the State Plumbing
5 Code, shall be conveniently located, and shall be accessible to workers at all times.

6 (2) A bathroom opening to the kitchen or dining area shall have adequate ventilation and
7 a self-closing door. Ventilation may be provided by a window or by mechanical means. A soap
8 dispenser and disposable towels shall be provided for hand washing in a bathroom used by a
9 food handler.

10 (3) A toilet facility, including toilet fixtures and a related vestibule, shall be kept clean
11 and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily
12 cleanable receptacles shall be provided for waste materials.

13 Section 12. Hand-washing Facilities for Processors and Processing Assistants.

14 (1) Hand-washing facilities shall be installed pursuant to the requirements of the State
15 Plumbing Code, KRS Chapter 318 and 815 KAR 20:191, and shall be conveniently located.

16 (2) A hand-washing facility shall be provided with hot and cold potable water.

17 (3) A supply of hand-cleansing soap or detergent shall be available from a dispensing
18 unit at each hand-washing facility. A supply of sanitary towels or a hand-drying device providing
19 heated air shall be conveniently located near each hand-washing facility. Common or cloth
20 towels shall be prohibited. Easily cleanable waste receptacles shall be conveniently located near
21 the hand-washing facility.

22 (4) A soap dispenser and disposable towels for use in hand washing shall be provided at

1 the kitchen sink. This sink shall not be used for hand washing after toilet use. After visiting the
2 toilet, hands shall first be washed in an approved hand-washing facility before they are washed in
3 the kitchen sink.

4 (5) Hand-washing facilities, soap or detergent dispensers, hand-drying devices, and all
5 related facilities shall be kept clean and in good repair.

6 Section 13. Floors, Walls, Ceilings, and Lighting. The floors, walls, ceilings, and attached
7 equipment in food preparation and storage areas and in workers bathrooms of a Home- Based
8 Microprocessor facility shall be fabricated from easily cleanable material, shall be maintained in
9 good repair, and clean. Artificial lighting shall be provided sufficient to facilitate sanitary food
10 handling and cleaning of facilities.

11 Section 14. Insect and Rodent Control.

12 (1) Effective measures shall be utilized to minimize the entry, presence, and propagation
13 of rodents, flies, cockroaches, or of pests. The premises shall be maintained in a condition that is
14 pest free and that prevents the harborage or feeding of insects or rodents.

15 (2) Pesticides and rodenticides.

16 (a) A person shall not apply insecticides or rodenticides except:

17 1. In accordance with requirements of KRS 217B.500 to 217B.990 and 302 KAR Chapter
18 29;

19 2. In accordance with the manufacturer's labeling; and

20 3. In such a way that food, food-contact surfaces, and the supply of potable water are not
21 contaminated.

22 (b) Open pesticide or rodenticide bait boxes shall not be used;

1 (c) Pesticides, rodenticides and other toxic materials shall be stored apart from food,
2 equipment, and utensils. Every container of toxic material shall be clearly labeled for easy
3 identification; and

4 (d) Pesticides and rodenticides shall be stored separated from other toxic and chemical
5 compounds at all times.

6 (3) Garbage and refuse shall be disposed of often enough and in a manner to prevent the
7 development of objectionable odors and the attraction of pests. Where garbage or refuse is
8 burned on the premises, it shall be done by controlled incineration that prevents the escape of
9 particulate matter pursuant to applicable regulations of the Cabinet for Natural Resources and
10 Environmental Protection.

11 Section 15. Microprocessors utilizing Permitted Kitchens.

12 (1) Microprocessors may elect to process their food products utilizing a kitchen that
13 currently holds a valid permit to operate issued by the Cabinet.

14 (2) Microprocessors utilizing a permitted kitchen shall comply with Sections 3 through
15 14 of this administrative regulation;

16 (a) Provide a copy of a signed, written agreement between the facility owner and the
17 farmer that authorizes the use of the permitted kitchen for Microprocessing and the name,
18 address, and permit number of the facility;

19 (b) Microprocessed food products shall not be made during periods of time when the
20 permitted facility is in operation;

21 (c) Microprocessed food products shall be stored at the farmers primary residence and
22 shall be maintained separate and apart from the personal use food supplies; and

(d) Microprocessed food products made in a permitted kitchen shall only be sold at farmers markets, certified roadside stands, or from the microprocessor's farm.

Section 16. Plan Review of Future Construction. If a kitchen or worker bathroom facility of a Home-Based Microprocessor is constructed or extensively remodeled, properly prepared plans and specifications for the construction, remodeling, or alteration, showing layout, construction materials, location, size, and type of fixed equipment facilities, and a plumbing riser diagram shall be submitted to the local health department for approval before the work is begun.

Section 17. Inspections, Notices, Records.

(1) Inspections. At least once every two years, the Cabinet shall inspect each Home-Based Microprocessor and shall make as many additional inspections and reinspections as are necessary for the enforcement of this administrative regulation.

(2) Inspection records. The Cabinet representative inspecting a Home-Based Microprocessor shall record the findings, and shall furnish a copy of the inspection report to the certificate holder or his representative in charge.

(3) Issuances of notices. If an inspection reveals a violation of this administrative regulation, the Cabinet shall notify the certificate holder or his representative in charge. In the notification, the Cabinet shall:

(a) Establish the specific violations found; and

(b) Establish a specific and reasonable period of time for the correction of the violations found pursuant to the following provisions:

(4) The report of inspection shall state:

1 (a) Failure to comply with a notice from the Cabinet or local health department, or with a
2 time limit for correction of a violation, shall result in regulatory action up to and including
3 suspension of the certificate, as provided in KRS 217.126;

4 (b) An opportunity for appeal from an adverse notice or inspection finding shall be
5 provided if a written request is filed with the Cabinet within ten (10) days following service of
6 notice, in accordance with 902 KAR 1:400; and

7 (c) Failure to comply with a notice issued in accordance with the provisions of this
8 administrative regulation may result in suspension of the certificate.

9 (5) Service of notice. A notice provided for under this section shall be properly served if
10 a copy of the inspection report form or other notice has been delivered personally to the
11 certificate holder or person in charge, or the notice has been sent by registered or certified mail,
12 return receipt requested, to the last known address of the certificate holder. A copy of the notice
13 shall be filed with the Cabinet.

14 (6) The Cabinet shall maintain a record of all certified home-based microprocessors and
15 shall provide this information to the University of Kentucky Cooperative Extension Service
16 Office and Local Health Departments.

17 Section 18. Certificate Suspension, Revocation or Denial.

18 (1) A Home-Based Microprocessor Certificate shall be suspended immediately, upon
19 notice to the certificate holder if:

20 (a) The Cabinet has reason to believe that an imminent public health hazard exists; or

21 (b) The certificate holder has interfered with the cabinet in the performance of its duties;

22 (2) In all other instances, the cabinet shall allow a certificate holder a reasonable
23 opportunity to correct a violation. The Cabinet shall notify, in writing, a certificate holder or

operator who fails to comply with a written notice issued under the provisions of this administrative regulation, that the certificate shall be suspended at the end of ten (10) days following service of the notice, unless a written request for is filed in accordance with 902 KAR 1:400.

(3) Reinstatement of suspended certificate. A person whose certificate has been suspended may make application for a reinspection for the purpose of reinstatement of the certificate. Within ten (10) days following receipt of a written request, including a statement signed by the applicant that, in his opinion, the conditions causing suspension of the certificate have been corrected, the Cabinet shall make a reinspection. If the applicant is in compliance with the requirements of this administrative regulation, the certificate shall be reinstated.

(4) Revocation of certificate. For serious or repeated violations of the requirements of this administrative regulation, or for interference with the Cabinet in the performance of its duties, a certificate may be permanently revoked. Before a permanent revocation action is taken, the Cabinet shall notify the certificate holder in writing, stating the reasons for which the certificate is subject to revocation and advising that the certificate shall be permanently revoked at the end of ten (10) days following service of the notice, unless a request for an appeal is filed in accordance with 902 KAR 1:400. A certificate may be suspended for cause pending revocation.

(5) Denial. Any applicant denied the issuance of a certificate by the Cabinet within ten (10) days of service of the notice may appeal the certificate denial in accordance with 902 KAR 1:400.

Section 19. Incorporation by reference.

(1) The following material is incorporated by reference:

- 1 (a)“DFS-250, Application for Home-based Processor”;
- 2 (b) “ DFS-251, Application for Home-based Microprocessor”;
- 3 (c) “ DFS-252, Home-based Processor/Microprocessor Inspection Report”;
- 4 (d) “DFS-234, Certificate or Registration to Operate”;
- 5 (e) DFS 214, Enforcement Notice;
- 6 (f) DFS 212, Request for Conference;
- 7 (g) DFS 213, Notice for Conference; and
- 8 (h) DFS 215, Application for Reinstatement of Home-based Microprocessor Certification

9 (2) This material may be inspected, copied, or obtained pursuant to copyright laws at the
10 Kentucky Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40601,
11 Monday through Friday, 8:00am to 4:30pm.

902 KAR 45:090, Farmers Market

Reviewed:

Nicholas Z. Kafoglis, M.D., Chairman
Public Health Services Advisory Council

Rice C. Leach, M.D. Date
Commissioner
Department for Public Health

APPROVED

Marcia R. Morgan Date
Secretary
Cabinet for Health Services

A public hearing on this regulation will be held August 21, 2003, at 9:00 a.m., in the Cabinet for Health Services Auditorium, 1st floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending shall notify this agency in writing by August 14, 2003. If no notice of intent to attend the hearing is received by that date the hearing may be canceled. The hearing is open to the public. Any person who attends will be given the opportunity to comment on the proposed administrative regulation. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation until August 30, 2003. Send written notice of intent to attend the public hearing or written comments to:

Jill Brown
Cabinet Regulation Coordinator
Office of the General Counsel
Cabinet for Health Services
275 East Main Street – 5-W-B
Frankfort, KY 40621
502/564-7905
FAX 502/564-7573

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 902 KAR 45:090, Farmers Markets

Contact person: Guy F. Delius, Assistant Director, Division of Public Health Protection & Safety.

(1) Provide a brief summary of:

(a) What this administrative regulation does: The emergency regulation 902 KAR 45:090E sets the minimum standards for food products processed in residential kitchens by Home-Based Processors and Home-Based Microprocessors and marketed at Kentucky Farmers Markets, Certified Roadside Stands, and from the processors farm.

(b) The necessity of this administrative regulation: HB 391 amended KRS 217:005 to 217:215 to include the processing of food products by Home-Based Processors and Home-Based Microprocessors and the marketing at Farmers Markets, Certified Roadside Stands and from the processors farm.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 217:005 to 217.215. Will provide minimum standards for efficient administration and enforcement of Home-Based Processors and Home-Based Microprocessors.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will establish the minimum standards for Home-Based Processors and Home-Based Microprocessors.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: 1,000 Home-Based Processors and 500 Home-Based Microprocessors, 120 Local Health Departments, Department of Agriculture, Kentucky Farm Bureau, University of Kentucky Extension Service Office, and state Food Manufacturing Inspectors.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: The regulation will allow the Home-Based Processors and Home-Based Microprocessors to market food products processed in residential kitchens; Local Health Departments will provide surveillance of Farmers Markets and Certified Roadside Stands; the Department of Agriculture will maintain listing of Farmers Markets; the Kentucky Farm Bureau will maintain the listing of Certified Roadside Stands; the University of Kentucky will provide food processing training for Home-Based Microprocessors and serve as the Processing Authority; and the Division of Public Health Protection and Safety will maintain registers of Home-Based Processors and Certify and Inspect Home-Based Microprocessors.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
(a) Initially: Cost of duplication of the administrative regulation for prospective Home-Based Processors and Home-Based Microprocessors, Local Health Departments, Dept. of Agriculture, Kentucky Farm Bureau, University of Kentucky Extension Services, and the general public; duplication of administrative forms for administering the program; travel cost to inspect the Home-Based Microprocessors; administrative cost for review of the microprocessor food product labels.

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Trust and Agency based upon Certification Fees established by this emergency regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulations establishes the fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Yes, a fee for Certification is established. The rates comply with rates initially established for other food manufacturing businesses.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used)

Home-Based Processors are exempt from payment of fees.

Home-Based Microprocessors: No, tiering was not appropriate in this administrative regulation because the food products are produced in the homes.
The administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON LOCAL GOVERNMENT

Reg No: 902 KAR 45:090

Agency: Cabinet for Health Services
Department for Public Health

Contact: Guy F. Delius, Assistant Director

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government?

Yes X

No _____

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. Yes

This regulation would affect only a part of the local government.

3. State the aspect or service of local government to which this administrative regulation relates. This administrative regulation relates to local health departments only.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: Cost will be absorbed through fees.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH SERVICES
DEPARTMENT FOR PUBLIC HEALTH

902 KAR 45:090, Farmers Market

Summary of Materials Incorporated by Reference

The following forms are being incorporated by reference:

1. DFS-250, Application for Home-Based Processor: Document completed by the farmer and utilized by data entry to submit information to the Cabinet; one form.
2. DFS-251, Application for Home-Based Microprocessor: Document completed by the farmer and utilized by data entry to submit information to the Cabinet; one form.
3. DFS-234, Registration or Certification Document: The document issued to registered Home-Based Processors and Certified Home-Based Microprocessors; one form.
3. DFS-252, Home-Based processor/Microprocessor Inspection Report: Inspection sheet to record violations of a home-based processor or microprocessor; one form.
4. DFS-214, Enforcement Notice: Notice of administrative action to be taken by the Cabinet or its agent in the event of non-compliance with the regulation; one form.
5. DFS-212, Request for Conference: Request for a conference; one form.
6. DFS-213, Notice of Conference: Serves as official notice of the time and place and purpose of the administrative conference; one form.
7. DFS-215, Application for Reinstatement: An administrative form used to request reinstatement of the registration of a Home-Based Processor or certification of a Home-Based Microprocessor; one form.